

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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Adelphia Recovery Trust,	:	
	:	
Plaintiff,	:	
	:	Case No. 1:09-cv-00215-RJA
-against-	:	
	:	<b>STIPULATION AND ORDER</b>
Key Bank National Association, HSBC	:	
Bank USA, National Association and Fleet	:	
National Bank,	:	
	:	
Defendants.	:	
	:	
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WHEREAS, on March 23, 24, and 26, 2007, Defendants Fleet National Bank (n/k/a Bank of America, N.A.) (“Fleet”), HSBC Bank USA, National Association (“HSBC”), and Key Bank, National Association (“Key Bank”) (Fleet, HSBC and Key Bank are referred to herein as the “Sabres Banks”), filed Notices of Administrative Claim in the Chapter 11 proceeding of Adelphia Communications Corporation (“Adelphia”) in the Bankruptcy Court for the Southern District of New York in the proceeding entitled In re Adelphia Communications Corporation, No. 02-41729 (HSBC: Bankr. S.D.N.Y. Dk. No. 13,293, Fleet: Bankr. S.D.N.Y. Dk. No. 13,302 and Key Bank: Bankr. S.D.N.Y. Dk. No. 13,308) (collectively, the “Administrative Claims”); and,

WHEREAS, on March 5, 2009, a Memorandum and Order was entered in Adelphia Recovery Trust v. Bank of America, N.A., et al., 05 Civ. 9050 (LMM) (S.D.N.Y.) (the “Southern District Case”) severing and transferring Claims 17-24 (fraudulent conveyance), Claim 56 (aiding and abetting breach of fiduciary duty), and Claim 57 (equitable disallowance of the Administrative Claims or, alternatively, equitable subordination of those claims) (collectively,

the “Sabres Claims”) asserted against the Sabres Banks by Plaintiff, the Adelpia Recovery Trust (the “Trust”), the successor-in-interest to Adelpia, in its first Amended Complaint in the Southern District Case (Southern District Case Docket No. 132) to this Court (Southern District Case Docket No. 954) (the “Transfer Order”); and,

WHEREAS, attached hereto as Exhibit A is an index of the pleadings (the “Southern District Pleadings”) and, among other motions: (i) the Trust’s Motion to Dismiss HSBC’s “Post Petition Tort” counterclaim; (ii) Key Bank’s Motion to Dismiss Count 56; and (iii) HSBC’s Expedited Motion to Dismiss Counts 56 and Count 57 (the “Southern District Motions” and collectively with the Southern District Pleadings, the “Southern District Filings”) which were filed in the Southern District Case, relative to the Sabres Claims, at the time the Transfer Order was entered; and,

WHEREAS, the Southern District Filings are before this Court pursuant to the Transfer Order relative to Claims 56 and 57; and,

WHEREAS, it is the desire of the Court that the Parties file amended and restated motions in response to the Southern District Pleadings in this action (“Motions”); and,

WHEREAS, a Status Conference pursuant to Federal Rule of Civil Procedure 16 was held in this Court on September 14, 2011 wherein the Parties agreed to the following schedule in connection with the Motions;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all parties herein, that:

1. The Parties shall, within 5 days from the date of this Order, file with the Clerk of the Court for the Western District of New York, an Index to the Southern District Filings as set forth in the attached Exhibit A.

2. The Parties shall file the Motions on or before **November 18, 2011**.
3. The Parties shall file papers in opposition to the Motions on or before **December 19, 2011**.
4. The Parties have leave to file any papers in reply to any opposition filed on or before **January 20, 2012**.
5. Oral argument on the Motions shall be heard on **February 23, 2012 at 12:00 p.m.**

For the Adelphia Recovery Trust:

/s/ David J. Shapiro  
David M. Friedman  
David J. Shapiro  
KASOWITZ, BENSON, TORRES  
& FRIEDMAN LLP  
1633 Broadway  
New York, NY 10019  
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For HSBC Bank USA, National Association:

/s/ Angela Z. Miller  
William J. Brown  
Angela Z. Miller  
PHILLIPS LYTTLE LLP  
3400 HSBC Center  
Buffalo, NY 14203  
(716) 847-7089

For Key Bank National Association:

/s/ Stephen D. Williger  
Rebecca Brazzano  
Stephen D. Williger  
Gregory P. Photiadis  
THOMPSON HINE LLP  
335 Madison Avenue  
New York, NY 10017  
(212) 344-5680

So ordered:

\_\_\_\_\_  
The Honorable Richard J. Arcara  
Dated: October \_\_\_\_, 2011

**Exhibit A**

**Index to the Southern District Filings**

1. **Docket No. 1** - July 6, 2003 - Complaint against Bank of America, N.A. et al. Filed by Official Committee of Unsecured Creditors for Adelphia Communications Corporation, et al. (Official Committee of Unsecured Creditors for Adelphia Communications Corp. et al. v. Bank of America, N.A., et al., Adv. Proc. No. 03-04942 (Bankr. S.D.N.Y.)) (Friedman, David) (Entered: 07/06/2003);
2. **Docket No. 132** - October 31, 2007 - AMENDED COMPLAINT against Bank of New York, et al. . . . by Adelphia Recovery Trust.(pl) Additional attachment(s) added on 11/8/2007 (Lancaster, Patricia). (Entered: 11/05/2007);
3. **Docket No. 434** - January 24, 2008 - NOTICE of Motion to Dismiss, to Sever and to Transfer Venue. Document filed by Key Bank National Association. (Ostrow, Alec) (Entered: 01/24/2008);
4. **Docket No. 435** - January 24, 2008 - MOTION to Dismiss *to Sever and to Transfer Venue*. Document filed by Key Bank National Association.(Ostrow, Alec) (Entered: 01/24/2008);
5. **Docket No. 436** - January 24, 2008 - MEMORANDUM OF LAW in Support re: 435 MOTION to Dismiss *to Sever and to Transfer Venue*.. Document filed by Key Bank National Association. (Ostrow, Alec) (Entered: 01/24/2008);
6. **Docket No. 437** - January 24, 2008 - DECLARATION of Alec P. Ostrow in Support re: 435 MOTION to Dismiss *to Sever and to Transfer Venue*.. Document filed by Key Bank National Association. (Attachments) . . . (Ostrow, Alec) (Entered: 01/24/2008);
7. **Docket No. 438** - January 24, 2008 - MOTION to Sever HSBC Bank USA, National Association's Motion for Severance and Transfer of Plaintiffs' Sabres Bank Claims to United States District Court for the Western District of New York. Document filed by HSBC Bank USA, National Association. (Attachments) . . . (Miller, Angela) (Entered: 01/24/2008);
8. **Docket No. 443** - January 25, 2008 - ANSWER to Amended Complaint., COUNTERCLAIM against Adelphia Recovery Trust, Adelphia Communications Corp.. Document filed by HSBC Bank USA, National Association. . . . (Attachments) . . . (Miller, Angela) (Entered: 01/25/2008);

9. **Docket No. 445** – January 25, 2008 - NOTICE of of Defendant Fleet National Bank's Motion to Dismiss and Joinder in Motions to Sever, Transfer Venue, and Refer Claims Against the Sabres Banks. Document filed by Fleet National Bank. (Elkin, Judith) (Entered: 01/25/2008);

10. **Docket No. 446** – January 25, 2008 - MEMORANDUM OF LAW . . . *in Support of Defendant Fleet National Bank's Motion to Dismiss and Joinder in Motions to Sever, Transfer Venue, and Refer Claims Against the Sabres Banks*. Document filed by Fleet National Bank. (Attachments) . . . (Elkin, Judith) (Entered: 01/25/2008);

11. **Docket No. 447** – January 25, 2008 - ENDORSED LETTER addressed to Judge Lawrence M. McKenna from Judith Elkin dated 1/25/08 re: Accordingly, Fleet respectfully requests that this Court permit Fleet to file Exhibit A to its Motion to Dismiss under seal. So Ordered.. ENDORSEMENT: GRANTED. So Ordered. (Signed by Judge Lawrence M. McKenna on 1/25/08) (js) (Entered: 01/25/2008)

12. **Docket No. 531** – February 29, 2008 - ANSWER to Amended Complaint., COUNTERCLAIM against Adelphia Recovery Trust, Adelphia Communications Corp.. Document filed by HSBC Bank USA, National Association. (Attachments) . . . (Miller, Angela) (Entered: 02/29/2008);

13. **Docket No. 541** – March 4, 2008 - SECOND AMENDED COMPLAINT . . . against Merrill Lynch Pierce, Fenner & Smith Incorporated, et al. . . . filed by Adelphia Recovery Trust. (Attachments) . . . (Entered: 03/07/2008);

14. **Docket No. 615** – March 28, 2008 - ANSWER to Amended Complaint., COUNTERCLAIM against Adelphia Recovery Trust, Adelphia Communications Corp.. Document filed by HSBC Bank USA, National Association. . . . (Attachments) . . . (Miller, Angela) (Entered: 03/28/2008);

15. **Docket No. 692** – April 15, 2008 - FIRST MEMORANDUM OF LAW in Opposition re: 438 MOTION to Sever HSBC Bank USA, National Association's Motion for Severance and Transfer of Plaintiffs' Sabres Bank Claims to United States District Court for the Western District of New York., 435 MOTION to Dismiss to Sever and to Transfer Venue. Memorandum of Law. Document filed by Adelphia Recovery Trust. (Attachments) . . . (Novick, Robert) (Entered: 04/15/2008);

16. **Docket No. 759** – May 5, 2008 - REPLY MEMORANDUM OF LAW in Support re: 438 MOTION to Sever HSBC Bank USA, National Association's Motion for Severance and Transfer of

*Plaintiffs' Sabres Bank Claims to United States District Court for the Western District of New York.. Document filed by HSBC Bank USA, National Association. (Attachments) . . . (Miller, Angela) (Entered: 05/05/2008);*

17. **Docket No. 760** – May 5, 2008 - REPLY  
MEMORANDUM OF LAW in Support re: 435 MOTION to Dismiss *to Sever and to Transfer Venue. Reply Brief in Further Support of Motion By Defendant Key Bank, National Association to Dismiss, To Sever and To Transfer Venue.* Document filed by Key Bank National Association. (Ostrow, Alec) (Entered: 05/05/2008);

18. **Docket No. 758 and 769** – May 8, 2008 - REPLY  
MEMORANDUM OF LAW in Support re: 541 Amended Complaint, 445 Notice (Other) /*Reply Memorandum of Law in Support of Defendant Fleet National Bank's Motion to Dismiss and Joinder in Motions to Sever, Transfer Venue, and Refer Claims Against the Sabres Banks.* Document filed by Fleet National Bank. (Anigian, Richard) (Entered: 05/08/2008);

19. **Docket No. 789** – May 30, 2008 - MOTION to Dismiss *the "Post Petition Tort" Counterclaim Asserted by HSBC Bank USA, National Association.* Document filed by Adelphia Recovery Trust.(Harwood, Michael) (Entered: 05/30/2008);

20. **Docket No. 790** – May 30, 2008 - MEMORANDUM OF LAW in Support re: 789 MOTION to Dismiss *the "Post Petition Tort" Counterclaim Asserted by HSBC Bank USA, National Association..* Document filed by Adelphia Recovery Trust. (Harwood, Michael) (Entered: 05/30/2008);

21. **Docket No. 828** – July 15, 2008 - MEMORANDUM OF LAW in Opposition re: 789 MOTION to Dismiss *the "Post Petition Tort" Counterclaim Asserted by HSBC Bank USA, National Association..* Document filed by HSBC Bank USA, National Association. (Attachments) . . . (Miller, Angela) (Entered: 07/15/2008);

22. **Docket No. 888** - July 30, 2008 - REPLY  
MEMORANDUM OF LAW in Support re: 789 MOTION to Dismiss *the "Post Petition Tort" Counterclaim Asserted by HSBC Bank USA, National Association..* Document filed by Adelphia Recovery Trust. (Attachments) . . . (Harwood, Michael) (Entered: 07/30/2008);

23. **Docket No. 892** - August 5, 2008 - ENDORSED  
LETTER addressed to Judge Lawrence M. McKenna from Roger Netzer dated 8/4/08 re: The "Adelphia Debtors" request that (i) the Adelphia Debtors' Reply Memorandum of Law in Support of Adelphia Recovery Trust's Motion to Dismiss the "Post Petition Tort" Counterclaim of HSBC Bank USA, N.A. dated 8/4/08, (ii) the declaration of Avani Shah dated

8/4/08; and (iii) the accompanying Exhibits A through G be filed under seal. ENDORSEMENT: The Clerk is directed to file the annexed documents under seal. (Signed by Judge Lawrence M. McKenna on 8/14/08) (tro) (Entered: 08/05/2008);

24. **Docket No. 945** – February 23, 2009 - MOTION to Dismiss *Expedited Motion to Dismiss by HSBC Bank USA, National Association Pursuant to Procedure Established by June 14, 2004 Bankruptcy Court Order*. Document filed by HSBC Bank USA, National Association. (Attachments) . . . (Miller, Angela) (Entered: 02/23/2009);

25. **Docket No. 949** – February 25, 2009 - ENDORSED LETTER addressed to Judge Lawrence M. McKenna and Magistrate Judge Ronald L. Ellis from Richard D. Anigian by Judith R. w/ permission dated 2/13/2009 re: Counsel writes on behalf of Fleet National Bank, by through is successor by merger Bank of America, N.A. to request an informal discovery conference in advance of seeking a protective order to prohibit the Adelphia Recovery Trust from pursuing onerous and irrelevant discovery against Fleet on issues surrounding loans related to the Buffalo Sabres hockey team. ENDORSEMENT: Discovery of HSBC, Key Bank, and Fleet National Bank (Bank of America) as parties, or by those entities, and motions related thereto, are stayed pending decision by this Court of those entities' motions for severance and transfer to the United States District Court for the Western District of New York of plaintiffs' claims against them. So ordered. (Signed by Judge Lawrence M. McKenna on 2/25/2009) (tve) (Entered: 02/26/2009);

26. **Docket No. 954** – March 5, 2009 - MEMORANDUM AND ORDER: For the reasons above claims 17-24 and 56-57 of the Amended Complaint are severed and transferred to the Western District of New York District Court. (Signed by Judge Lawrence M. McKenna on 3/5/09) (tro) (Entered: 03/06/2009);

27. **Filed Under Seal** - August 4, 2008 - Declaration of Avani Shah in support of Memorandum of Law in Support of the Adelphia Recovery Trust's Motion to Dismiss the Post Petition Tort Counterclaim of HSBC Bank USA, N.A.;

28. **Filed Under Seal** - August 4, 2008 - Adelphia Debtor's Reply Memorandum of Law in Support of the Adelphia Recovery Trust's Motion to Dismiss the Post Petition Tort Counterclaim of HSBC Bank USA, N.A.